

**In re: HERMAN E. HOFFMAN, JR., d/b/a HERMAN AND ASSOCIATES,
AND BILLY G. TURNER, d/b/a WES AND MOM TRUCKING.
P.Q. Docket No. 00-0010.
Decision and Order filed August 28, 2000.**

James Booth, for Complainant.
Respondent, Pro se.
Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for violations of the regulations governing the importation of plant pests and related articles (7 C.F.R. § 301.81 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167), the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) (Acts) and the regulations promulgated thereunder, by a complaint filed on June 1, 2000, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Billy G. Turner, d/b/a Wes and Mom Trucking, respondent, is an individual whose mailing address is 110 3rd Street, Moore, TX 78057.

2. On or about August 25, 1998, the respondent, in violation of 7 C.F.R. § 301.81-4(a), moved regulated articles (a used bulldozer and trailer, soil) from the quarantined area of Montgomery county, Texas, into the nonquarantined area of Arizona without a certificate or limited permit, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Act (7 C.F.R. § 301.81 *et seq.*). Therefore, the following Order is issued.

Order

The respondent, Billy G. Turner, d/b/a Wes and Mom Trucking, is hereby assessed a civil penalty of one thousand dollars (\$1,000.00). This civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 00-0010

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final October 10, 2000.-Editor]
